

DETAILED ACTION

Claim Rejections - 35 USC § 103

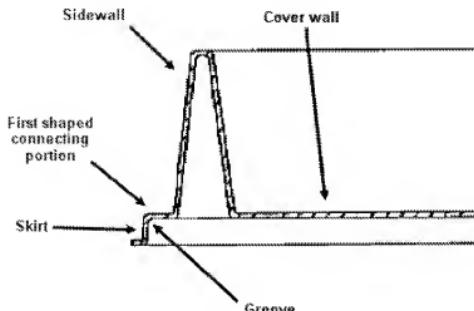
1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

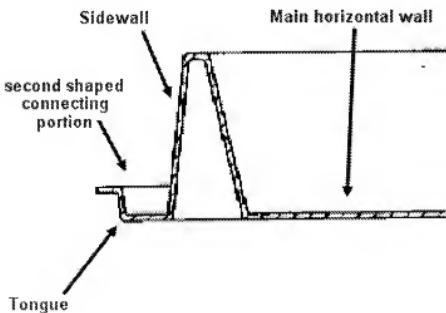
2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christen (US 2004/0099560) in view of Kim (US 6,415,947). Christen discloses a plastic package for securing and displaying small articles of commerce, said package including: a lid (16) having a generally flat cover wall (20); a generally vertical bifurcated sidewall having an outer perimeter and bounding said cover wall; a first shaped connecting portion extending along the outer perimeter of said vertical sidewall; a skirt portion having an upper part and extending downwardly along an outer edge of said first connecting portion (See portion of FIG. 6 shown below).



a bottom (14) having a main horizontal wall; a generally vertical bifurcated sidewall bounding said main wall; a second shaped connecting portion extending along an outer perimeter of said bottom sidewall and shaped to mate with said first connecting portion (See portion of FIG. 5 shown below).



As described above, Christen discloses the claimed invention except for the indent and outwardly projecting locking edge. However, Kim teaches a plastic package comprising a lid (2) including a shaped connecting portion comprising an indent (7a)

extending along an upper part of a skirt portion (adjacent groove 11 in Fig. 2); and a bottom (3) including a outwardly projecting locking edge (portion 10 that extends through the indent) along an outer part of a shaped connecting portion for the purpose of locking the lid to the bottom portion. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shaped connecting portions of Christen to include an indent and an outwardly extending locking edge as taught by Kim in order to more securely lock the lid portion to the bottom portion.

Regarding claims 2-10, Christen-Kim discloses said locking edge includes a plurality of spaced apart tabs (10) and said indent includes slots (7a,7b) for receiving said tabs; aid lid sidewall has an inverted V shape, and said bottom sidewall has an upright V shape (See Christen FIG. 7); said first shaped connecting portion comprises a groove and said second shaped portion comprises a tongue (See figures shown above); said bottom main wall and lid cover wall have a shaped cavity for receiving an article of commerce (See Christen FIG. 7); said cover wall lies flush against said bottom main wall when said lid is secured to said bottom; and said lid and bottom are generally rectangular.

Regarding claims 11 and 12, Christen-Kim discloses the claimed invention except for the specific shape of the lid and bottom. To modify the lid and bottom portions to be circular as claimed would entail a mere change in shape of the lid and bottom portions and yield only predictable results. "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it

would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." KSR Int'l v. Teleflex Inc., 127 S.Ct. 1740, 82 USPQ2d 1396 (2007). A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

4. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christen (US 2004/0099560) in view of Bostic (US 4,545,486). Christen discloses a plastic package for securing and displaying small articles of commerce, said package including: a lid (16) having a generally flat cover wall (20); a generally vertical bifurcated sidewall having an outer perimeter and bounding said cover wall; a first shaped connecting portion having an outer edge and extending along the outer perimeter of said vertical sidewall; a skirt portion having an upper part and extending downwardly along an outer edge of said first connecting portion (See portion of FIG. 6 shown above); a bottom (14) having a main horizontal wall; a generally vertical bifurcated sidewall bounding said main wall; a second shaped connecting portion extending along an outer perimeter of said bottom sidewall and shaped to mate with said first connecting portion (See portion of FIG. 5 shown above).

As described above, Christen discloses the claimed invention except for the indent and outwardly projecting locking edge. However, Bostic teaches a plastic package comprising a lid (14) including a shaped connecting portion comprising an indent (21) extending along an upper part of a skirt portion; and a bottom (12) including

a outwardly projecting locking edge (element 17 extend into the indent) along an outer part of a shaped connecting portion for the purpose of locking the lid to the bottom portion. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shaped connecting portions of Christen to include an indent and an outwardly extending locking edge as taught by Bostic in order to more securely lock the lid portion to the bottom portion.

Regarding claims 2-10, Christen-Bostic discloses said locking edge includes a plurality of spaced apart tabs (17) and said indent includes slots (21) for receiving said tabs; aid lid sidewall has an inverted V shape, and said bottom sidewall has an upright V shape (See Christen FIG. 7); said first shaped connecting portion comprises a groove and said second shaped portion comprises a tongue (See figures shown above); said bottom main wall and lid cover wall have a shaped cavity for receiving an article of commerce (See Christen FIG. 7); said cover wall lies flush against said bottom main wall when said lid is secured to said bottom; and said lid and bottom are generally rectangular.

Regarding claims 11 and 12, Christen-Bostic discloses the claimed invention except for the specific shape of the lid and bottom. To modify the lid and bottom portions to be circular as claimed would entail a mere change in shape of the lid and bottom portions and yield only predictable results. "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." KSR Int'l v. Teleflex Inc., 127 S.Ct.

1740, 82 USPQ2d 1396 (2007). A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47.

Response to Arguments

5. Applicant's arguments filed 9/22/08 have been fully considered but they are not persuasive. Applicant argues that the primary reference "Christen" does not constitute prior art under 102 and 103(a) since "Christen" has a publication date of May 27, 2004, and the present application was filed October 14, 2003. This is incorrect as "Christen" was filed before the present invention was filed, and would therefore be a proper 102(e) and is proper for a 103(a) rejection.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Friday 9:30am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. R./
Examiner, Art Unit 3728

/Mickey Yu/
Supervisory Patent Examiner, Art
Unit 3728